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TRANSCRIPT OF PROCEEDINGS

JUN - 1 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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IN RE:

MM DOCKET NO. 93-41

APPLICATIONS FOR CONSTRUCTION
PERMIT FOR A NEW NONCOMMERCIAL
EDUCATIONAL FM STATION

Asheboro, North Carolina

DATE OF HEARING: May 11, 1993

VOLUME: I

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JUN - 1 1993

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2 FEDERAL COMMUNICATIONS COMMISSION
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In Re:)
APPLICATIONS FOR CONSTRUCTION) MM Docket No. 93-41
PERMIT FOR A NEW NONCOMMERCIAL)
EDUCATIONAL FM STATION)
Asheboro, North Carolina)
-----)

The above-entitled matter came on for pre-hearing conference pursuant to notice before Joseph P. Gonzalez, Administrative Law Judge, at 2000 L Street, N.W., Courtroom No. 1, Washington, D.C., on Tuesday, May 11, 1993, at 9:00 a.m.

APPEARANCES:

On behalf of Positive Alternative Radio, Inc.:

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On behalf of Triad Family Network, Inc.:

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On behalf of Mass Media Bureau:

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25	Hearing Began: 9:05 a.m. Hearing Ended: 9:32 a.m.

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P R O C E E D I N G S

(9:05 a.m.)

1 JUDGE GONZALEZ: Today's date is May 11th, 1993,
2 the time is 9:05 in the morning. This is proceed -- a
3 prehearing conference regarding the matter of the mutually
4 exclusive applications of Triad Family Network, Inc. and
5 Positive Alternate (sic) Radio, Inc. for, in the case of
6 Triad, a noncommercial station at Winston-Salem, North
7 Carolina on Channel 207C3, and in the case of Positive
8 Alternative Radio, Incorporated, in Asheboro, North Carolina,
9 on Channel 207A, also for a noncommercial educational FM
10 station. Would the parties enter their appearance, beginning
11 on my left. Sir?

12 MR. FRERET: Your Honor, my name is Julian Freret.
13 I, along with my partner, Christopher Imlay, represent
14 Positive Alternative Radio, Inc.

15 JUDGE GONZALEZ: Thank you, sir.

16 MR. PELTZMAN: For Triad Family Network, Inc., Lee
17 J. Peltzman and Aaron P. Shainis, from the firm Shainis and
18 Peltzman.

19 MR. GOLDSTEIN: For the Chief of the Mass Media
20 Bureau, Norm Goldstein.

21 JUDGE GONZALEZ: Thank you. As I mentioned to the
22 parties before we went on the record, I -- there were a number
23 of pleadings submitted to me fairly recently and I have gone
24 over them and have decided to rule as follows. There was a
25

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1 Request to Supplement Opposition to a Petition for Leave to
2 Amend that was filed by Triad Family Network, Inc. on May 7th,
3 1993.

4 I have already issued an order in that case --
5 dealing with that petition, which I, I don't know whether you
6 -- the parties have received it yet or not, in which I granted
7 the petition in question and received the amendment and I saw
8 no reason on the basis of any argument in the Request to
9 Supplement Opposition to revisit the matter, so I am not -- so
10 I am denying the -- that request.

11 There was a petition to dismiss the Triad
12 application filed by Positive Alternative Radio, Inc. on April
13 6th, 1993. That is being denied on the date -- on the basis
14 that the petitioner has failed to show good cause in -- good
15 cause for granting the relief sought. There was a Petition to
16 Enlarge Issues filed by Positive Alternative Radio, Inc. on
17 April 8th, 1993. I'm also denying that on the basis that
18 petitioner had failed to include in its petition sufficient
19 allegations of fact to warrant the action requested supportive
20 in the manner required by the Commission's rules, specifically
21 1.229.

22 And then finally, there was a first petition to
23 enlarge issues against Positive Alternative Radio, Inc., filed
24 by Triad Family Network, Inc., on April 8th, 1993. I note
25 that just this morning I received a request -- a Motion to

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1 Strike a reply -- a portion of a -- of the reply pleading to
2 the opposition to first Petition to Enlarge Issues. That was
3 filed by Positive Alternative Radio, Inc. I don't know
4 whether Triad wants to comment. Have you seen a copy?

5 MR. PELTZMAN: We have not -- I was unaware of
6 that, of that --

7 JUDGE GONZALEZ: It was just filed this morning, so
8 it's quite likely you may not have seen it.

9 MR. PELTZMAN: Would you like me -- I can ask for a
10 five-minute continuance if you would like me --

11 JUDGE GONZALEZ: It will only take a few minutes to
12 read. Surely. We'll go off the record briefly and give Mr.
13 Peltzman an opportunity to read.

14 MR. FRERET: Your Honor, may I take a look at your
15 copy of that. I didn't bring my file.

16 JUDGE GONZALEZ: Oh, I'm sorry. I only have one
17 unfortunately so I'll need it back, but you're certainly
18 welcome to read it while Mr. Peltzman's reading it.

19 (Whereupon, off the record.)

20 JUDGE GONZALEZ: -- go back on the record. Just
21 briefly, Mr. Freret, I gather that from my quick reading of
22 it, that you are asking that the reference to additional
23 station -- stations that was made in the, in the reply
24 statement be stricken. Is that correct?

25 MR. FRERET: That's correct, Your Honor.

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1 JUDGE GONZALEZ: I -- now, Positive Alternative
2 Radio, are these active stations or are they just permits or
3 what?

4 MR. FRERET: I understand some of them are either
5 on the air or about to go on the air --

6 JUDGE GONZALEZ: But they are Positive Alternative
7 Radio stations?

8 MR. FRERET: Your Honor, I don't recall whether
9 they are Positive Alternative or whether they are stations to
10 which Positive Alternative principals have an interest.

11 JUDGE GONZALEZ: I see. But there is some
12 connection between these stations and either a principal or
13 the actual applicant?

14 MR. FRERET: There, there is a connection, but this
15 was just brought to my attention in this pleading in, in
16 opposition and -- or in the reply pleading --

17 JUDGE GONZALEZ: Right.

18 MR. FRERET: -- which I think is in violation of
19 the rules. I, I have no opportunity to reply to the --

20 JUDGE GONZALEZ: Right, understood. Mr. Peltzman.

21 MR. PELTZMAN: Your Honor, first, Mr. Freret is
22 correct. It's not -- these others -- four stations he refers
23 to in that pleading are applications, I believe, for -- may I
24 look at the pleading?

25 MR. FRERET: Sure.

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1 MR. PELTZMAN: Or, I believe, CPs -- or unbuilt --
2 I'm sorry, they are CPs, Point Pleasant, Union City, Union
3 City. The reason they were brought up is as follows. The
4 original allegation was a financial issue because there were a
5 number of applications and construction permits which had not
6 been billed and we argued that they had to show sufficient
7 financial resources to construct and operate them all. We
8 also argued warehousing, because Positive Alternative had ten
9 permits and only built one station, so not only -- we argued
10 warehousing.

11 Mr. Freret came back and, and he filed an

12 [REDACTED] In that connection he said with respect to the

1 would say that Mr. Freret has opened it up by bringing in his
2 defense and I am only responding to his defense.

3 JUDGE GONZALEZ: Mr. Freret?

4 MR. FRERET: I, I find no merit whatsoever in that
5 to the extent that Mr. Peltzman brought up the fact that he
6 thought we were unable to finance stations A, B, C, D, etc.
7 and now he has come up with another set of stations which he
8 never mentioned before, which were in the record. He could
9 have brought those up previously, but he apparently overlooked
10 them and now he wants to come in through the back door and put
11 us through more difficulty --

12 JUDGE GONZALEZ: Yeah. I guess the problem is is
13 that conceivably there could be other sources of financing for
14 these specific stations, which there may or may not be, but
15 Mr. Freret certainly could have mentioned it if, in fact,
16 there was. I guess that, that troubles me to some extent.
17 However, overall my feeling is is that in view of the, of the
18 significant number of, of CPs, stations, and applications that
19 I really don't have much choice but to designate a, a
20 financial qualifications issue.

21 I think that if I didn't I would run a high risk of
22 having it remanded on that basis. In view of some of the
23 recent cases, I, I really don't think I have much choice. I
24 don't think it presents an intolerable burden on Positive
25 Alternative Radio, because I think that -- the financial

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1 qualifications issue could be resolved by a Motion for Summary
2 Decision if, in fact, it can be established that the parties
3 have sufficient funds to, to meet all their pressing financial
4 commitments.

5 I mean that is a possibility. I'm not saying it's
6 a certainty, but it's a possibility that could be resolved in
7 that way. So I have, I have decided that, that it, it is
8 necessary to go ahead and, and designate a financial
9 qualifications issue in, in response to that particular
10 petition.

11 MR. PELTZMAN: Your Honor, do we --

12 JUDGE GONZALEZ: Yes, sir.

13 MR. PELTZMAN: -- have a right to conduct
14 discovery. I'm, I'm assume --

15 JUDGE GONZALEZ: Yes, and I was just getting ready
16 to, to mention that as well. However, I don't really see any
17 merit for a warehousing issue at this time, so that portion of
18 the, of the first petition will be denied. But we'll, we'll
19 -- we will go forward on the, the financial qualifications
20 issue. This discovery requested by Triad I am also
21 authorizing as stated by Triad. Are there any questions with
22 respect to -- I mean, I will be issuing an order setting forth
23 all these rulings later, but is -- are there any questions
24 with respect to how we're going to proceed on that, that
25 additional --

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1 MR. PELTZMAN: With respect to discovery, at the
2 time -- as you, as you are aware the Commission's rules now
3 provide that when you ask for an issue, you, you state the
4 extent of your discovery, but obviously you -- at the time I
5 did not know the basis of the qualifications, the financial
6 qualifications certification, so I could not -- I would have
7 to speculate as to the full extent of discovery and I guess
8 what I'm saying is I know now more than I did when I filed the
9 issue with respect to where the money is allegedly coming
10 from, so I may in the future want to supplement that, that
11 discovery with respect to individuals or, or documents I was
12 unaware of at the time that I sought the issue.

13 JUDGE GONZALEZ: Right. Well, you can -- I'll
14 certainly entertain a request. I mean, my -- from my reading,
15 quite frankly, Mr. Peltzman, I felt the discovery request was
16 well-put. I mean, I think it really quite -- it covers the
17 area quite well. But Mr. Freret would obviously have an
18 opportunity to respond to any further request.

19 MR. PELTZMAN: Okay. The other question is not on
20 this, but on your, your initial ruling with respect to the
21 supplement, which I filed on Friday and, and you're correct.
22 I was unaware that you had previously ruled when I filed this
23 supplement or I would not have, not have filed --

24 JUDGE GONZALEZ: Perfectly all right.

25 MR. PELTZMAN: -- the supplement. You, you have

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1 | come out -- you -- already released, issued a release, an
2 | order, which we got yesterday with respect to the initial
3 | opposition, refraining the Petition for Leave to Amend. And,
4 | and you've stated today that the supplement -- you would not
5 | change your mind in view of the supplement.

6 | JUDGE GONZALEZ: Right.

7 | MR. PELTZMAN: I'm assuming that you -- or maybe I
8 | should ask you. Do you intend to. to issue a written ruling

1 well, but attempted to deal with in the supplement was the
2 question of initial reasonable assurance of, of the --

3 JUDGE GONZALEZ: Right. Yeah -- it comes back to
4 me now.

5 MR. PELTZMAN: Now, now, I will be filing a
6 petition to enlarge based on that and I guess Mr. Freret can
7 have an -- well, the right to oppose that and, and --

8 JUDGE GONZALEZ: Right.

9 MR. PELTZMAN: -- hear that again, but I was trying
10 to get my, understand what my rights were, because it's my
11 understanding of the law that if an applicant doesn't have
12 assurance to begin with, it doesn't have a right to --

13 JUDGE GONZALEZ: Right.

14 MR. PELTZMAN: -- to amend and that was the
15 argument I was trying, trying to make.

16 JUDGE GONZALEZ: Right.

17 MR. PELTZMAN: And I felt, obviously I felt that,
18 that I was correct on it and, and was going to ask you to
19 reconsider the ruling based on the supplement. You have
20 already indicated from the bench that that would not be a
21 wise --

22 JUDGE GONZALEZ: Well, with your petition I gather
23 you'll have another opportunity to, to make pretty much the
24 same argument, won't you?

25 MR. PELTZMAN: Yeah, yeah. That would be --

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1 JUDGE GONZALEZ: So I guess that will be another
2 crack at it, Mr. Peltzman.

3 MR. PELTZMAN: All right. So you would, you would
4 -- you're -- what I hear you saying is if you're going to make
5 that argument, make it in the, in the petition.

6 JUDGE GONZALEZ: Well, that certainly would be
7 where I'd do it.

8 MR. PELTZMAN: Yeah. Thank you very much.

9 JUDGE GONZALEZ: Okay.

10 MR. FRERET: Your Honor, I wasn't prepared to have
11 counsel reargue his supplement here in open court --

12 JUDGE GONZALEZ: No, no. Well, as I've indi-- as
13 I've indicated --

14 MR. FRERET: I'm a little surprised --

15 JUDGE GONZALEZ: As I've indicated, I, I saw no
16 reason for reading the supplement to change my, my initial
17 ruling. Anything further? All right. Well, then, we'll go
18 ahead and discuss some procedural dates. As I've indicated,
19 the date for the admission session has been set at July 8th,
20 1993. The parties have indicated to me that they have no
21 problem with that date and I don't have a problem with that
22 date.

23 At the admission session we'll receive the, the
24 written direct case and also to -- I will request that certain
25 parties be presented for cross-examination. I would

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1 underscore the importance that the parties, both parties, come
2 -- actually all parties and the Mass Media Bureau in case it
3 has any interest, all parties come prepared to make a very
4 detailed and -- statement as to why a particular witness
5 should be presented for cross-examination.

6 I want to underscore that, because as you know the
7 Commission is discouraging cross-examination. It feels that
8 in most instances cross-examination is not necessary.
9 Therefore, the burden is on the person requesting cross-
10 examination to make a very clear showing that it's necessary
11 for the proper resolution of, of the matter at hand.

12 MR. FRERET: Well, I understand what Your Honor
13 just said. Likewise, on July the 8th, we'll present
14 notification of witnesses desired.

15 JUDGE GONZALEZ: Right. In other words, you'll,
16 you'll present your exhibits, we'll go through those, and then
17 afterwards there'll be a formal request made by each party as
18 to which witnesses they feel should be presented. Sponsoring
19 witness should be presented for cross-examination. I think
20 that's -- and that will begin at 9:30 here in, in Washington,
21 D.C., as is customary. The hearing will commence on July
22 22nd, 1993, and that will begin at 10:00 a.m. in the Office of
23 the Commission in Washington, D.C.

24 Also, I think it's probably helpful if we set a
25 date for completion of discovery. I, I note that the

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1 admission session date is the beginning of July, so does
2 somebody want to suggest -- I mean July 8th, does someone want
3 to suggest a date for completion of discovery?

4 MR. PELTZMAN: Maybe two weeks before that date?

5 JUDGE GONZALEZ: That would be the 30th of June,
6 Mr. Freret. Do you have a problem with --

7 MR. GOLDSTEIN: Two weeks before would be the 24th.

8 MR. PELTZMAN: What, what day of the week is it?

9 MR. GOLDSTEIN: July 8th is a Thursday.

10 MR. PELTZMAN: -- two weeks Friday --

11 JUDGE GONZALEZ: Yeah, I'm sorry. I stand
12 corrected, the 24th. Is that agreeable?

13 MR. PELTZMAN: Why -- if it's -- why don't we make
14 it the Friday and that'll be, that'll be --

15 JUDGE GONZALEZ: The 25th? Yeah, I don't have any
16 problem. Mr. Freret? Do you have any problem?

17 MR. FRERET: It's all right with me.

18 JUDGE GONZALEZ: All right. Well, then, we'll make
19 the date for completion of discovery June 25th, '93. All
20 right, I note too that there's an areas and pops issue and so
21 they'll be -- have to be an engineering exhibit, unless the
22 parties can agree that there is no significant difference, but
23 I -- does someone want to suggest a date for the preliminary
24 exchange of the joint engineering exhibit? Or joint
25 stipulation?

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1 MR. GOLDSTEIN: June 11th.

2 JUDGE GONZALEZ: Is that okay with the parties?

3 MR. PELTZMAN: I think we can do it -- we should be
4 able to do it. Is it all right with you?

5 MR. FRERET: -- can do --

6 MR. PELTZMAN: The areas and pops, the areas and
7 pops engineering --

----- should be have one engineer

1 JUDGE GONZALEZ: That's a little close, I think.

2 MR. PELTZMAN: So -- the Monday before July 5th,
3 then --

4 JUDGE GONZALEZ: That would be the 28th of June.
5 Is that all right?

6 MR. PELTZMAN: It's fine with us.

7 MR. FRERET: All right.

8 JUDGE GONZALEZ: Okay. All right. I think that
9 takes care of the, the procedural dates. And everyone's
10 familiar with, with the issues at hand I'm sure. If not, the
11 H -- the Hearing Designation Order sets them forth quite,
12 quite clearly. I guess it's my -- also my further obligation
13 to encourage the parties to try to reach some sort of
14 settlement or a time-sharing type of arrangement, which the
15 Commission seems to favor.

16 So I would certainly strongly urge the parties to,
17 to look into that as a possibility to resolve this, this
18 proceeding since very often with these noncommercial stations
19 it's -- you almost feel like you have to flip a coin to decide
20 who to, to award the station to. So, I guess that's the
21 rationale behind the Commission's --

22 MR. GOLDSTEIN: Your Honor, to, to further that --

23 JUDGE GONZALEZ: -- policy.

24 MR. GOLDSTEIN: -- to further that position, can I
25 ask that you set a date for some status reports on discussions

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1 between the, the mutually exclusive applicants on resolution
2 of the proceeding, either by settlement or by developing a
3 share of time?

4 JUDGE GONZALEZ: Right. And also too I guess it
5 would be helpful if the parties got together and also decided
6 on the scope of discovery with respect to the comparative
7 issue as well as the 307B issue. Does someone want to suggest
8 a date for a conference between the, the two parties to
9 discuss a time-sharing arrangement, possible settlement, as
10 well as discovery, joint discovery?

11 MR. PELTZMAN: -- a week from today?

12 JUDGE GONZALEZ: Mr. Peltzman?

1 know, normally depositions are conducted in the city of
2 residence of the particular person to be deposed, but if the
3 parties agree to conduct depositions elsewhere, that's their
4 prerogative

1 | than 24 hours' notice. But I would hope that the parties,
2 | when they have their conference, that they can get together
3 | and try to resolve that as quickly as possible.

4 | MR. FRERET: That's what I --

5 | MR. PELTZMAN: I, I would agree with respect to
6 | principals of the, of the two groups.

7 | JUDGE GONZALEZ: Right. I, I can't imagine it
8 | would extend much further than the principals. I don't know
9 | how many principals are involved here, but -- and even then I
10 | don't know whether it would be a requirement that every
11 | principal be deposed. But I, I think that's something the
12 | parties can work out amongst themselves. I certainly hope
13 | that we don't run into a problem that would have to involve
14 | me, but if so, then I'm prepared to go ahead and we can maybe
15 | do that by a conference call and, and avoid a, avoid a formal
16 | motion.

17 | MR. PELTZMAN: Another question is, I believe I
18 | know the answer, but I want to just establish it. With
19 | respect to the conference, are you directing for any of the
20 | principals be represented as well as the --

21 | JUDGE GONZALEZ: At the admission session, you
22 | mean?

23 | MR. PELTZMAN: No. The, the May 17th conference.

24 | JUDGE GONZALEZ: Oh, oh, I'm sorry. Between the
25 | parties.

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1 MR. PELTZMAN: Yeah. I mean, sometimes it's better
2 to have principals there because --

3 JUDGE GONZALEZ: Well, I think that's strictly up
4 to you, to you men.

5 MR. PELTZMAN: Yeah.

6 JUDGE GONZALEZ: I mean, if you, if you think it
7 would be helpful to facilitate the discussion of settlement or
8 a timeshare, fine. That's -- it's all right with me. Or if
9 you think it'd be easier not to have them there, then again
10 that, that's really up to both of you.

11 MR. PELTZMAN: Okay. And we would then file a
12 report approximately a week later, a week to ten days later?
13 Is that -- does that sound all right with Mr. Freret?

14 JUDGE GONZALEZ: I would think a week would be a
15 little long. Could it be any sooner than that?

16 MR. PELTZMAN: Maybe Friday of that week?

17 JUDGE GONZALEZ: Well, it's May 17th, so Friday
18 would be the 21st?

19 MR. FRERET: Seventeenth's a Tuesday. I think
20 Friday would be adequate.

21 JUDGE GONZALEZ: All right. Well, then, why don't
22 we do May 21st. And that will be a joint report then? I
23 don't care who prepares it.

24 MR. PELTZMAN: That's fine, fine with us. Would
25 Bureau counsel like to be present at any --

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1 MR. GOLDSTEIN: I'd like to know where it is --

2 MR. FRERET: I didn't hear your answer, Mr.

3 Goldstein.

4 MR. GOLDSTEIN: I said I'd like to know where it is
5 and when it is, if you want to have it at the Bureau's office.
6 I'd like to stay after and discuss it --

7 JUDGE GONZALEZ: Well, I --

8 MR. PELTZMAN: In fact, if it's all right with Mr.
9 Freret, I don't know whether his schedule would allow it, if
10 he could stay a few minutes beyond the conference. I, I don't
11 think the room's being used. Perhaps we could --

12 MR. FRERET: Do you mean --

13 MR. PELTZMAN: -- start the ball rolling right now.

1 JUDGE GONZALEZ: Right, right. I think everybody's
2 gotten that -- I would think everybody's gotten that order.
3 Anything further? Any other matters that anyone feels should
4 be brought up before we conclude? All right. Hearing
5 nothing, we'll conclude as of 9:32. Thank you very much.

6 (Whereupon, at 9:32 a.m., the proceeding was adjourned.)
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CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER

APPLICATIONS FOR ASHEBORO, NORTH CAROLINA

Name

MM DOCKET NO. 93-41

Docket No.

WASHINGTON, D.C.

Place

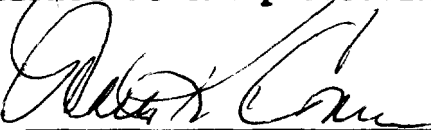
MAY 11, 1993

Date

We, the undersigned, do hereby certify that the foregoing pages, numbers 1 through 23, inclusive, are the true, accurate and complete transcript prepared from the reporting by DAVID BECKER in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

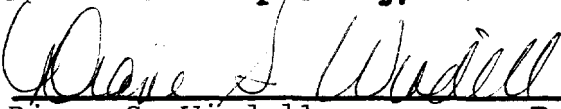
May 18, 1993

Date


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May 19, 1993

Date


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Date


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